to its articles. When the corporation decides to issue $50,000 of the authorized increase, the right of the stockholder is fully protected by permitting him to purchase his proportionate share of such $50,000 proposed to be issued, and this we think is as far as the rule extends.

"In this case the corporation had done nothing more than to amend its articles authorizing an increase in its capital stock. Neither the stockholders nor the board of directors had taken action authorizing the issue of any part of such increase. Moreover, the resolution authorizing the increase of the capital stock recites that it is necessary to raise the money for the purpose of constructing a proposed extension of the railroad, and specifically provides:

" 'That said stock and bonds when issued be disposed of only as may be necessary to procure funds for the construction and equipment of said extension, and should it be found not to be necessary to use the entire issue hereby provided for then the balance shall be held in the treasury of the company to be disposed of in the future as may be determined.'

"It is without dispute that the building of the extension was abandoned when war was declared, and there is no pretense on the part of the defendants that the money accruing from the sale of this stock was necessary for the purpose of constructing the extension. Under the circumstances, the sale of the stock was not only unauthorized, but was prohibited by the fundamental governing body of the corporation, the stockholders themselves. There was therefore no power or authority on the part of the president and secretary of the company to sell the stock in question to themselves or to any other person, and its issuance was void. The judgment of the lower court canceling said stock was plainly right."

Taxation—Income of Corporation Derived from Sources Outside of State.—In F. S. Royster Guano Co. *v.* Commonwealth of Virginia, 40 Supt. Ct. Rep. 560, the Supreme Court (Justices Brandeis and Holmes, dissenting) held that Va. Acts 1916, c. 472, in so far as it imposes on a domestic corporation doing business both within and outside the state a tax with respect to its income derived from sources outside the state, denies such corporation the equal protection of the laws, in violation of the Fourteenth Amendment, in view of Va. Acts 1916, c. 495, exempting domestic corporations doing no part of their business within the state from any tax on their income.

The court said in part: "Of course, these two statutes—chapter 472 and chapter 495—must be considered together as parts of one and the same law; and by their combined effect, if the judgment under review be affirmed, plaintiff in error will be required to pay a tax upon its income derived from business done without as well as from that done within the state, while other corporations owing existence

to the same laws and simultaneously deriving income from business done without the state, but none from business within it, are exempt from taxation. It is unnecessary to say that the 'equal protection of the laws' required by the Fourteenth Amendment does not prevent the states from resorting to classification for the purposes of legislation. Numerous and familiar decisions of this court establish that they have a wide range of discretion in that regard. But the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. The latitude of discretion is notably wide in the classification of property for purposes of taxation and the granting of partial or total exemptions upon grounds of policy. Bell's Gap R. R. Co. *v.* Pennsylvania, 134 U. S. 232, 237, 10 Sup. Ct. 533, 33 L. Ed. 892; Michigan Central Railroad *v.* Powers, 201 U. S. 245, 293, 26 Sup. Ct. 459, 50 L. Ed. 744; Reeney *v.* New York, 222 U. S. 525, 536, 32 Sup. Ct. 105, 56 L. Ed. 299, 38 L. R. A. (N. S.) 1139; Citizens' Telephone Co. *v.* Fuller, 229 U. S. 322, 329, 33 Sup. Ct. 833, 57 L. Ed. 1206; Northwestern Life Ins. Co. *v.* Wisconsin, 247 U. S. 132, 139, 38 Sup. Ct. 444, 62 L. Ed. 1205. Nevertheless a discriminatory tax law cannot be sustained against the complaint of a party aggrieved if the classification appear to be altogether illusory. Now both of the taxing provisions here in question relate to corporations organized under the laws of Virginia. It is the object of chapter 495 to exempt such corporations from income taxes (as well as taxes upon intangible property) where they do no business within the state except holding their stockholders' meetings therein; manifestly in recognition of the fact that Virginia corporations so circumstanced derive no governmental protection from the state warranting the imposition of taxes upon their incomes derived from without the state or property taxes upon their intangibles, and in recognition of the impolicy, if not injustice, of imposing such taxes upon them while they are liable, and presumably subjected, to taxation in the state or states where their income-producing business is conducted. But no ground is suggested, nor can we conceive of any, sustaining this exemption which does not apply with equal or greater force as a ground for exempting from taxation the income of Virginia corporations derived from sources without the state where they also transact income-producing business within the state. Corporations of this class derive no more protection from the state of their origin with respect to their outside business, and are no less subject to taxation by the states in which such business is conducted, than corporations of the other class; and they are required to comply with the same laws as to the payment of organization taxes and annual registration fees and franchise taxes to the state of origin. Their business done within the state presumably is of some general benefit to the state,

certainly enriches its treasury by the amount of the taxes they pay upon the income derived therefrom; and the imposition upon them under chapter 472 of taxes not only upon this income, but also upon income that they derive from business conducted outside of the state (similar income of the favored corporations being exempted) has the effect of discriminating against them for that which ought to operate if at all in their favor. It is obvious that the ground of difference upon which the discrimination is rested has no fair or substantial relation to the proper object sought to be accomplished by the legislation. It follows that it is arbitrary in effect; and none the less because it is probable that the unequal operation of the taxing system was due to inadvertence rather than design."

The following note is appended to the above case in 20 Columbia Law Review 793: The state has extensive power in the taxation of domestic corporations. Kansas City, etc., R. R. *v.* Stiles (1916) 242 U. S. 111, 37 Sup. Ct. 58; Cream of Wheat Co. *v.* County of Grand Forks (1920) 40 Sup. Ct. 558. But when it is attempted to make a distinction, the classification must be on reasonable grounds. Raymond *v.* Chicago Union T. Co. (1907) 207 U. S. 20, 28 Sup. Ct. 7. In the case of foreign corporations, see Southern Ry. *v.* Greene (1910) 216 U. S. 400, 30 Sup. Ct. 287; but see Cheney Bros. Co. *v.* Massachusetts (1918) 246 U. S. 147, 38 Sup. Ct. 295. Mr. Justice Brandeis in his dissenting opinion justifies the present distinction by the advantage to the state of inducing foreign business to incorporate in Virginia. This leaves *bona fide* domestic corporations in the position of being subject to taxation because they cannot escape. The Supreme Court has always been reluctant to declare taxes void for discrimination. See Beers *v.* Glynn (1909) 211 U. S. 477, s. c. sub. nom. Lord *v.* Glynn, 29 Sup. Ct. 186. This fact, as well as the usual criticisms in the present opinion of taxation where no benefit is conferred, 40 Sup. Ct. at p. 562, suggest that the fundamental vice of the instant tax is not discrimination but extraterritoriality. The history of taxation of foreign corporations shows at first unrestricted power to tax. Horn Silver Mining Co. *v.* New York (1891) 143 U. S. 305, 12 Sup. Ct. 403. Then extra-territorial taxation is declared void under the commerce clause, and also for lack of due process, though no cases have as yet been decided upon the latter ground alone. Western Union Tel. Co. *v.* Kansas (1910) 216 U. S. 1, 30 Sup. Ct. 190; Looney *v.* Crane Co. (1917) 245 U. S. 178, 38 Sup. Ct. 85; (1918) 18 Columbia Law Rev. 168. It is suggested that the instant case may foreshadow a similar change, and that we may yet expect to find extra-territorial taxation of domestic corporations declared void whenever other grounds can be found. Perhaps eventually it will be held void under the due process clause.